

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 23, 2019

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Tonya Baer, Deputy Director
Office of Air

Docket No.: 2019-0266-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 117, Control of Air Pollution from Nitrogen Compounds
NO_x RACT Rules for the HGB and DFW 2008 Eight-Hour Ozone
Nonattainment Area Reclassifications
Rule Project No. 2019-074-117-AI

Background and reason(s) for the rulemaking:

The Federal Clean Air Act (FCAA) requires states to submit plans to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for ozone nonattainment areas designated with a classification of moderate or higher. The Dallas-Fort Worth (DFW) 2008 eight-hour ozone NAAQS nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, and the Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone NAAQS nonattainment area, consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, were designated moderate nonattainment for the 2008 eight-hour ozone NAAQS of 0.075 parts per million (ppm) with a July 20, 2018 attainment date. Based on 2017 monitoring data¹, the DFW and HGB areas did not attain the 2008 eight-hour ozone NAAQS and did not qualify for a one-year attainment date extension in accordance with FCAA, §181(a)(5)². The United States Environmental Protection Agency (EPA) proposed to reclassify the HGB and DFW areas to serious nonattainment for the 2008 eight-hour ozone NAAQS as published in the November 14, 2018 *Federal Register* (83 FR 56781). On August 7, 2019, the EPA signed the final reclassification notice.

Since the DFW and HGB areas have been reclassified by the EPA, the state will be required to submit a state implementation plan (SIP) revision to fulfill the nitrogen oxides (NO_x) reasonably available control technology (RACT) requirements mandated by FCAA, §172(c)(1) and §182(f). The EPA's *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements*; Final Rule, published in the *Federal Register* on March 6, 2015 (80 FR 12264), specifies an attainment date of July 20, 2021 for serious nonattainment areas. Although the HGB area was also

¹ The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date.

² An area that fails to attain the 2008 ozone NAAQS by its attainment date would be eligible for the first one-year extension if, for the attainment year, the area's 4th highest daily maximum eight-hour average is at or below the level of the standard (75 parts per billion (ppb)); the DFW area's fourth highest daily maximum eight-hour average for 2017 was 77 ppb as measured at the Dallas North No. 2 monitor (C63/C679) and the HGB area's fourth highest daily maximum eight-hour average for 2017 was 79 ppb as measured at the Conroe Relocated monitor (C78/A321). The DFW area's design value for 2017 was 79 ppb and the HGB area's design value for 2017 was 81 ppb.

Re: Docket No. 2019-0266-RUL

reclassified to serious nonattainment for the 2008 eight-hour ozone NAAQS, staff determined that RACT is in place for all emission source categories in the HGB area; therefore, there are no changes proposed in this rulemaking to implement RACT in the HGB area.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would revise Chapter 117 to implement RACT requirements for all major sources of NO_x in the DFW area and include revisions to §§117.10, 117.400, 117.403, 117.8000, and 117.9030.

B.) Scope required by federal regulations or state statutes:

FCAA, §172(c)(1) and §182(f), require the state to submit a SIP revision implementing RACT for all major sources of NO_x in the DFW area. The proposed rulemaking would implement only those RACT requirements that staff determines to be technologically and economically feasible. The proposed rulemaking would include establishing emission limits and control requirements; implementing work practice standards or operating requirements; requiring or updating associated monitoring, recordkeeping, and reporting; establishing exemptions; and adding other requirements necessary to implement RACT. The rulemaking would also add compliance dates for the new or revised RACT rules.

The major source threshold for Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, which made up the DFW serious nonattainment area under the previous 1997 eight-hour ozone NAAQS of 0.08 ppm, is currently 50 tons per year (tpy). Wise County was first included in the DFW ozone nonattainment area for the 2008 eight-hour ozone NAAQS; therefore, the major source threshold for Wise County is based on a classification of moderate under the 2008 eight-hour ozone NAAQS, which was 100 tpy of NO_x. With reclassification of the DFW area to serious nonattainment under the 2008 eight-hour ozone NAAQS, the major source emission threshold for all 10 counties, including Wise County, is 50 tpy of NO_x. This proposed rulemaking would implement RACT in Wise County to reflect this change in the major source threshold for Wise County.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff recommends making necessary technical corrections that may not be directly related to implementing RACT in the sections of Chapter 117 that are opened for this proposed rulemaking. In addition, the rulemaking would include other non-substantive revisions to Chapter 117 to update the rule language to current *Texas Register* and TCEQ style and format requirements. The rulemaking would also update allowed emission test methods in §117.8000 for engines to provide compliance flexibility to source owners or operators required to conduct compliance emissions performance testing under Chapter 117. The rulemaking would further clarify the restriction on operating hours for exempt stationary diesel and dual-fuel engines located at major sources of NO_x in the other nine counties of the DFW area.

Re: Docket No. 2019-0266-RUL

Statutory authority:

The rule amendments would be proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The rule amendments would also be proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.014, Emissions Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The rule amendments would also be proposed under 42 United States Code, §§7420 *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state. The EPA published the final rule establishing the 2008 NAAQS for ozone in the *Federal Register* on March 27, 2008 (73 FR 16436).

Effect on the:

A.) Regulated community:

The proposed rulemaking would be applicable to owners or operators of major stationary sources of NO_x located in the DFW area. All major sources of NO_x in the DFW 2008 eight-hour ozone nonattainment area, except Wise County, are already subject to Chapter 117 rule requirements that meet or exceed RACT. Because Wise County was previously classified as moderate nonattainment for the 2008 eight-hour ozone standard and this proposed rulemaking would extend implementation of RACT to all major sources of NO_x with a major source threshold of 50 tpy located in Wise County, owners or operators of any stationary gas-fired or diesel engine, stationary gas-fired turbine, gas-fired process heater, or incinerator located in Wise County would be required to comply with the proposed rules. If adopted, the rulemaking would require owners or operators of affected sources to comply with the emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform quarterly and periodic annual emissions compliance testing on stationary engines, submit compliance reports to the TCEQ, and maintain the appropriate records demonstrating compliance with the proposed rules, including but not limited to fuel usage, produced emissions, emissions-related control system maintenance, and emissions performance testing. If adopted, the rulemaking would

Re: Docket No. 2019-0266-RUL

further provide compliance flexibility to owners or operators of stationary internal combustion engines required to conduct stack emissions testing under Chapter 117 by allowing the use of an EPA-approved alternate test method.

B.) Public:

The public benefit anticipated from the changes included in the proposed rulemaking would be continued protection of the environment and public health and safety combined with efficient and fair administration of NO_x emission standards for the DFW area. It is estimated that the proposed rulemaking would reduce the amount of NO_x in the DFW area by 0.26 tons per day.

C.) Agency programs:

The proposed rulemaking may increase the workload for Office of Compliance and Enforcement staff when inspecting affected facilities to verify compliance with any new or revised Chapter 117 requirements. Staff from the Environmental Law Division would be solicited for legal advice. This change should relieve the TCEQ regional offices from having to approve case-by-case requests from the regulated community wishing to use the alternate test method, which is currently allowed under EPA federal regulations for stationary engines.

Stakeholder meetings:

No stakeholder meeting is planned for this rulemaking, but public hearings in Houston and Arlington are planned during the rulemaking public comment period.

Potential controversial concerns and legislative interest:

The EPA's final notice reclassifying areas from moderate to serious for the 2008 eight-hour ozone NAAQS includes two RACT implementation dates: 1) an implementation date of August 3, 2020 for measures necessary for meeting reasonable further progress (RFP) or demonstrating attainment; and 2) a RACT SIP submission deadline of August 3, 2020 with an implementation deadline of July 20, 2021 for RACT requirements not otherwise needed to demonstrate attainment. RACT measures are not necessary to meet RFP or demonstrate attainment for the DFW and HGB 2008 eight-hour ozone serious nonattainment areas; therefore, the RACT implementation deadline set for this proposed rulemaking is July 20, 2021, consistent with the EPA's final reclassification notice.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

FCAA, §172(c)(1) and §182(f), require the state to submit a SIP revision implementing RACT for all major sources of NO_x in the DFW area. Failure to submit a SIP revision fulfilling these RACT obligations for the area could result in sanctions or promulgation of a federal implementation plan. Sanctions could include transportation funding restrictions, grant withholdings, and increased emissions offset requirements for new construction and major modification of stationary sources in the DFW ozone

Re: Docket No. 2019-0266-RUL

nonattainment area. One alternative would be to not submit a SIP revision for the DFW area.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: September 11, 2019

Anticipated *Texas Register* publication date: September 27, 2019

Anticipated public hearing date (if any): October 14, 2019 and October 17, 2019

Anticipated public comment period: September 13, 2019 - October 28, 2019

Anticipated adoption date: March 4, 2020

Agency contacts:

Javier Galván, Rule Project Manager, Air Quality Division, (512) 239-1492

Amy Browning, Staff Attorney, (512) 239-0891

Kris Hogan, Texas Register Rule/Agenda Coordinator, (512) 239-6812

Attachments:

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Martha Landwehr
Office of General Counsel
Javier Galván
Kris Hogan